

## **Decision of the European Ombudsman on complaint 474/98/OV against the European Commission**

Decision

**Case 474/98/OV - Opened on 04/09/1998 - Decision on 27/10/1999**

Strasbourg, 27 October 1999 Dear Mr S., On 29 April 1998 you lodged a complaint with the European Ombudsman concerning your non-admission to participate in open competition EUR/A/123, because you did not possess the required diploma and work experience. On 4 September 1998, I forwarded the complaint to the President of the European Commission. The Commission sent its opinion on 13 November 1998 and I forwarded it to you with an invitation to make observations, if you so wished. I received your observations on 31 December 1998. On 23 February 1999 you wrote in order to inform about the outcome of your complaint. I answered to you on 8 March 1999 informing you that the inquiry was still pending. I am writing now to let you know the results of the inquiries that have been made.

### **THE COMPLAINT**

According to the complainant, the relevant facts were as follows: On 13 November 1997, the complainant submitted his application for participating in open competition EUR/A/123 organised by the Commission for the recruitment of A7/A6 administrators in the financial management and audit sectors (published in the Official Journal C 288 A of 23 September 1997). On 25 February 1998, the complainant received a letter from the Head of the Competitions Unit (DG IX) on behalf of the President of the Selection Board, informing him that he did not possess the work experience as required by point III.B.3 of the competition notice. This point prescribes that, by the closing date for the submission of applications (14 November 1997), candidates must have had at least three years' graduate-level experience in the audit and/or financial management sectors since obtaining the degree or diploma. The letter also stated that the Specific Conditions for officials and other servants of the European Communities were not applicable to the complainant. Officials and other servants who possess the required diploma must have a seniority in category B since 2 years. Without this diploma, which was the complainant's case, 8 years of service in a category B is necessary and the complainant did not fulfil this condition. On 13 March 1998, the complainant wrote back to the Head of the Competitions Unit stating that the Specific Conditions should apply in his case, given that he had a university degree (licentiate translator) as mentioned in point 2 of the annex to the competition notice, and that on 14 November 1997 he had more than 2 years seniority in category B. The complainant pointed out that he began his service for the Commission on 1 January 1995 and that his stage came to an end on 31 October 1995, which makes a seniority of 2 years and 14 days if the stage is not calculated. On 20 April 1998, the Head of the



Competitions Unit answered that the work experience mentioned in point III.B.3 of the competition notice is not required from officials and other servants of the EC who, on the closing date for the submission of applications, will have been serving in category B for at least two years and have obtained a university degree in a field concerning the function described in point II. The letter stated that the diploma of translator does not concern auditing, bookkeeping, finance or management. Without this diploma, point 3 of the annex requires a seniority of 8 years in category B on the closing date for the submission of applications. For those reasons the Selection Board confirmed its previous decision not to admit the complainant to participate in the competition. Not satisfied with the decision, the complainant made the present complaint to the Ombudsman alleging that the condition which requires a university degree relevant to the duties described in point II was not mentioned in point 2 of the Specific Conditions for officials and other servants of the EC (page 24 of the competition notice). According to the complainant, the Selection Board confused point III.B.2 (Certificates and Diplomas) of the competition notice with point 2 of the annex on page 24, which only requires a university degree without any specification.

## THE INQUIRY

**The Commission's opinion** In its opinion, the Commission, referring to different points in the competition notice, confirmed that the complainant did not fulfil the admission criteria for participating in the competition. The Commission first referred to point III.B.2 of the competition notice according to which *"Candidates must have completed a course of university education and obtained a degree or diploma relevant to the duties described at II above. The selection board will allow for differences between education systems"*. The annex foresees Specific Conditions applicable to officials and other servants of the European Communities. Point 3 of the annex provides that *"The degree or diploma referred to at III.B.2 with regard to the competition referred to above is not required in the case of officials or other servants of the European Communities who, on the closing date for the submission of applications, will have been serving in category B for at least eight years"*. The Commission stated that the complainant, having a seniority inferior to 8 years, could not benefit from this exception. Point 2 of the annex foresees that *"The experience referred to at III.B.3 with regard to competition EUR/A/123 (A7/A6) is not required in the case of officials or other servants of the EC who, on the closing date for the submission of applications, will have been serving in category B for at least two years and have completed a course of university and obtained a final degree or diploma (proof of which must be attached to their application form). The selection board will allow for differences between education systems"*. The Commission observed that, given that the complainant's diploma was not in relation with the functions mentioned in point II of the competition notice, it could not admit the complainant to the participate in the competition. **The complainant's observations** The complainant observed that the Selection Board had committed a mistake. He stated that the fact that he had 2 years seniority in category B and that he had obtained a university degree was enough to qualify as a candidate for the competition. It was not necessary that his degree related to the functions described in point II of the competition notice. However, given that the first test of the competition had already taken place, and that the Commission did not allow him to participate, the complainant asked to annul the competition because of discrimination and wrong assessment of the selection criteria by the Selection Board.



## THE DECISION

**1 The alleged non-admission to participate in open competition EUR/A/123** 1.1 The complainant alleged that, because of a wrong assessment of the selection criteria by the Selection Board, he was excluded from participating in open competition EUR/A/123 for administrators (A7/A6) in the financial management and audit sectors. The complainant more particularly observed that the Selection Board had confused the requirements mentioned in point III.B.2 of the competition notice and in point 2 of the Specific Conditions for officials and other servants of the EC. The Commission confirmed the decision of the Selection Board not to admit the complainant to the competition, because he had not obtained a diploma relevant to the duties described at point II of the competition notice and because he had no seniority of 8 years in category B. 1.2 The Ombudsman shall thus verify whether the Selection Board has respected the wording of the competition notice and correctly applied the eligibility criteria to the complainant's application. As regards the required diploma, point III.B.2 of the competition notice provided that candidates must have completed a course of university education and obtained a degree or diploma relevant to the duties described at II above. Those duties concerned financial management and audit. It is obvious that the complainant, who had obtained a diploma of translator, did not fulfil this criterion of the competition notice. 1.3 However, as regards this condition an exception was foreseen in the annex "Specific Conditions applicable to officials and other servants of the EC". Point 3 of this annex provided that the degree or diploma referred to at III.B.2 is not required in the case of officials or other servants who, on the closing date for the submission of applications, will have been serving in category B for at least eight years. The complainant, who had a seniority of nearly three years in category B, could therefore not benefit from this exception. It appears thus from the above that, as regards the diploma requirement, the complainant did not fulfil the eligibility condition of the competition notice, nor of the annex. 1.4 Nothing in the competition notice or in the annex sustains the complainant's statement that a candidate with a seniority of more than two years in category B and with a university degree not relating to financial management or audit should be allowed to participate in the competition. Point 2 of the annex, to which the complainant refers as support for his claim, foresees an exception, not on the requirement of a specialised diploma, but on the three years' graduate-level experience in the audit and/or management sectors prescribed by point III.B.3 of the competition notice. 1.5 On basis of these considerations, the Ombudsman considers that the decision of the Selection Board not to admit the complainant to the competition EUR/A/123 was based on a correct application of the eligibility criteria of the competition notice. The Selection Board has therefore acted within the limits of its legal authority and no maladministration has been found. **2 Conclusion** On the basis of the European Ombudsman's inquiries into this complaint, there appears to have been no maladministration by the European Commission. The Ombudsman has therefore decided to close the case. The President of the European Commission will also be informed of this decision. Yours sincerely  
Jacob SÖDERMAN